

THE HONORABLE TANA LIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

JUNXIONG HUANG, an individual,

Plaintiff,

v.

KENNETH WING and JANE DOE WING,
husband and wife, and the marital community
comprised thereof; and STATE FARM FIRE AND
CASUALTY COMPANY, a foreign corporation,

Defendants.

No. 2:22-CV-00449-TL

STIPULATION AND ORDER
REGARDING FRCP 35
EXAMINATION BY DR. LEAH
KEYLARD, AuD.

I. BACKGROUND INFORMATION

The above action is one for personal injury caused by a motor vehicle collision. Plaintiff Junxiong Huang (“Plaintiff”) alleges that he sustained injuries as a result of the negligent conduct of Defendants Kenneth Wing and Jane Doe Wing (“Defendant”), (collectively referred to as “the Parties”), and specifically that he has temporary and/or permanent partial hearing loss. Pursuant to Fed. R. Civ. P. 35 and for good cause, Defendant has requested a diagnostic audiogram of Plaintiff. A requirement of this Rule is that there be a mental or physical condition “in controversy.” Fed. R. Civ. P. 35(a)(1). The parties wish to stipulate to the following without the need for a motion, a defense showing of good cause, or a formal hearing.

STIPULATION AND ORDER REGARDING
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II. STIPULATION

THE PARTIES, by and through their respective counsel of record, Meredith A. Sawyer and Natalia Bendis, counsel for Defendant, and Anthony Marsh and Xi “Cissy” Wang, counsel for Plaintiff, stipulate that:

1. The examiner shall be Dr. Leah Keylard, AuD (“Examiner”). The examination shall occur on September 25th, 2023 at 9:00 a.m. The examination shall take place at Key Hearing Audiology and Vestibular Balance, 4300 Talbot Rd S Suite 313, Renton, WA 98055, or at another location as arranged by the Parties.

2. The examination to be conducted is a diagnostic audiogram of the Plaintiff for purposes of assessing hearing loss. The examination shall consist of a series of audiometric testing, consisting of air and bone pure tone testing, speech reception threshold testing, and possibly, speech discrimination testing. The entire series of testing will take no more than one hour.

3. The first test, pure tone air testing, involves placing headphones over the Plaintiff’s ears and presenting tones at different frequencies and at different intensities, and asking the Plaintiff to respond when he hears the sounds. The second test, pure tone bone testing, involves placing an oscillator on the Plaintiff’s skull behind the ear and presenting tones at different frequencies and at different intensities and asking the Plaintiff to respond when he hears the sounds. As discussed with the Plaintiff, the Examiner may also pursue impedance audiometry, which involves placing a probe in Plaintiff’s ears and, depending on the test, may transmit some pressure and sound— measuring the ears’ response to the stimulus presented through the probe. The last test would consist of Otoacoustic Emissions, wherein a probe is placed in Plaintiff’s ears, wherein a series of clicking noises at different frequencies are presented, measuring the ears’

1 response to the stimulus.

2 4. The Plaintiff shall have the right to have a representative present during the
3 examination to audio record the examination, with the understanding that the representative will
4 not obstruct or interfere with the examination in any manner. Defendant does not have a right to
5 have a representative present at the exam other than the Examiner.
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7 5. Defendant will arrange for and provide an interpreter for Plaintiff to interpret as
8 necessary from English to Cantonese and from Cantonese to English to facilitate understanding
9 between Plaintiff and the Examiner during the examination.

10 6. If the Plaintiff is asked to complete any forms, a copy of those forms shall be
11 delivered to the Plaintiff's attorney for his/her review no less than 5 days prior to the examination.
12 In the event there is any dispute regarding the forms, counsel for the Plaintiff and Defendant will
13 work to resolve that issue prior to the date of the examination.

14 7. No questions shall be asked of the Plaintiff by the Examiner or staff which in any
15 way relates to negligence or legal liability. This restriction does not limit the Examiner's inquiry
16 into the physical dynamics of any alleged injury occurrence relevant to the Plaintiff's present
17 condition or the Plaintiff's physical or mental capacities.
18

19 8. The Examiner may not perform or order any invasive tests, except as detailed
20 above.

21 9. The Examiner shall submit his or her written report of the examination to defense
22 counsel within 30 days of the examination and in no event less than 30 days prior to trial. Defense
23 counsel shall cause a copy of the report to be delivered to Plaintiff's counsel within 3 business
24 days of its receipt.

25 10. The following should be furnished to Plaintiff's counsel with the Examiner's report:

1 (1) Copies of all written materials and documents used or relied upon by the Examiner in
2 conducting the examination. This includes any factual materials and documents furnished to the
3 Examiner by Defense counsel, including all E-mails or other written communications between
4 defense counsel and the Examiner pertaining to the examination and formation of the opinions
5 set forth in the report. (2) Copies of all tests given to Plaintiff by the Examiner as completed or
6 filled out by Plaintiff, together with all notes or data generated by the Examiner or done by
7 Plaintiff. (3) All data obtained or used by the examiner in conducting the exam. (4) Results of all
8 tests, measurements and calculations completed regarding the exam and (5) All billing records
9 and correspondence to or from the Examiner concerning the examination.
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11 11. Pursuant to Fed. R. Civ. P. 35(b), the Examiner's report shall be in writing and
12 shall set out in detail the Examiner's findings, including diagnoses, conclusions, and the results
13 of any tests.

14 12. The report and all of its contents shall be confidential and shall be used only in
15 connection with this lawsuit.

16 13. Plaintiff shall be permitted to depose the Examiner upon reasonable notice and
17 agreement of the date, time, and place, but in any event on a date not less than forty-five (45)
18 days prior to the scheduled trial date. Defense counsel will recommend to the Examiner that she
19 agree to allow counsel to accept service of a subpoena duces tecum for her deposition and
20 production of documents in order to save Plaintiff the cost of process service.
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22 14. The Examiner shall not charge Plaintiff more than \$800 per hour for time related
23 to taking such deposition.
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1 15. A copy of this Stipulation and Order shall be given to the Examiner at least twenty-
2 four hours before the examination. The Defendant's attorney shall be responsible to see that the
3 Examiner is apprised of the limitations herein stipulated.

4 16. Nothing in this Stipulation and Order shall be construed as otherwise limiting the
5 Parties' respective rights and safeguards provided by Fed. R. Civ. P. 35.
6

7 DATED THIS 28th day of August 2023.

8 HERMANN LAW GROUP

9 /s/Anthony Marsh
10 Anthony Marsh, WSBA No. 45194
11 Xi "Cissy" Wang, WSBA No. 51235
12 Attorneys for Plaintiff

13 HWS LAW GROUP LLP

14 s/Meredith A. Sawyer
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17 Natalia Bendis, WSBA No. 60012
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19 Attorneys for Defendants Kenneth Wing
20 and Jane Doe
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ORDER

The parties, having stipulated to an FRCP 35 Examination of Plaintiff Junxiong Huang pursuant to the terms and conditions of the stipulation recited above,

IT IS HEREBY ORDERED that Plaintiff Junxiong Huang shall attend an FRCP 35 examination by Dr. Leah Keylard, a clinical audiologist hired by the attorneys for the Defendants, pursuant to the terms and conditions set forth in the Stipulation attached to this Order.

IT IS SO ORDERED.

Dated this 29th day of August 2023.



Tana Lin
United States District Judge